IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

The State of Rajasthan vs. Lal Chand & Anr.

D.B.Cri. Appeal No.168/1986

Under Section 378 (iii) & (i) Cr.P.C. against the judgment dated 16.12.85 passed by the Addl. Sessions Judge No.1, Hanumangarh, in Sessions Case No.07/1984.

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Date of Judgment: 18th September,2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.JPS.Choudhary, Public Prosecutor.
Mr.Digvijay Singh for complainant.
Mr.Vijay Bishnoi for the respondents.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal has been filed by the State of Rajasthan against the order of acquittal as recorded by the court of Addl.Sessions Judge No.1, Hanumangarh in criminal original case No.07/84, dated 16th December, 1985.

The prosecution case was initiated on the basis of a first information report lodged by Hazari Ram at Police Station Hanumangarh on 06.11.83 that he, along with his nephew Sohan Lal, were returning from bus-stand to their own house. When they reached near the house of Ramkaran in the lane at that time in their front, for about 30-40 paces, Bhadar Ram and Lal Chand with 12 bore gun in their hands , were going. After going a little ahead, they fired. Then Hazari and Sohan Lal returned to their house. They got apprehensive after returning to their house. Then both of them returned and saw in front of the house of Ganpat Ram that a man was lying there. When they reached near the house of Badri then they identified the man lying as Brij Lal. At that time accused Lal Chand came and he kicked Brijlal and returned. FIR No.222/83 was recorded under Section 302/34 IPC. On the basis of such report, investigation was conducted. Charge sheet was filed. The case was in turn made over to the trial court. At the trial, the trial court framed the charges as under :-

1. Bhadar Ram – Under Section 302/34 IPC and Section 27 Arms Act.
2. Lal Chand – U/s 302 IPC and Section 27 Arms Act.

The accused denied the charges and claimed trial. At the

trial, prosecution examined 11 witnesses. The accused were examined under section 313 Cr.P.C. No witness was examined in defence.

The trial court considered the prosecution case and found that the alleged two witnesses , PW/1 Hazari and PW/2 Sohan Lal are the alleged eye witnesses of the occurrence.

The learned Public Prosecutor, arguing the case of the State, urged that the trial court was in error in discarding the testimony of 2 witnesses PW/1 Hazari and PW/2 Sohan Lal. They were the witnesses who were around the scene of occurrence. If there is some prevarication in their statement then, it cannot be said that they were not the witnesses who had spotted the happening. If the accused were found in and around the scene of occurrence at that time, then these circumstances squarely go against the accused persons. The gun recovered has been found to be serviceable and the empties recovered has been fired from the said gun. The cartridges recovered from the dead body could be fired from the gun recovered and therefore, the Public Prosecutor prayed that the findings of acquittal so recorded, deserves to be converted into conviction.

The trial court found that the initial version given in the first information report by Harzari Ram was that he , along with Sohan Lal, were in the lane then they heard the gun shot. At the trial, Hazari Ram has been produced. PW/1 Hazari Ram has deposed before the trial court that he was informed by Sohan Lal that they heard the gun shot and then Sohan Lal, while returning, informed that Brij Lal has been killed by gun shot by the accused persons. He has admitted in cross examination that in his police statement, Ex.D/1, he has not stated that Sohanlal ran towards accused persons. He has admitted that he has not seen the effectivity of the gun shot. He has also admitted that in Ex.P/1 and Ex.D/1 he has not narrated that Sohan Lal informed him that the accused has killed Brij Lal. Thus, the first informant Hazari Ram, PW/1 , according to his court's statement, and the statement in FIR and Police statement, was not a witness of the occurrence. He had not observed when the fire was made.

Then the trial court has considered the testimony of PW/2 Sohan Lal. The trial court has observed that PW/2 Sohan Lal has also deviated from his police statement, wherein he has stated that he had seen Bhadar Ram making the first fire and second fire was made by Lal Chand. In police statement , Ex.D/2, he has not

stated that he has seen the accused firing gun shot. In his police statement he had stated that he had gone to his house, then in retrospect he thought as to why the gun shot was fired and then he came and identified the deceased.

Thus, the trial court was of the opinion that none of the two alleged eye witnesses can be said to be the eye witnesses. The trial court has noticed the statement of the Doctor, who states that the injury , as sustained, cannot be gun shot wounds from a distance, because there was blackening around the wound and such blackening is only possible from a distance of 2-3". It is not the prosecution case that the fire was made from a close range. Then, the trial court has noticed that there is delay in lodging the first information report and sending the same to the court.

Thus, the trial court found that the accused persons have been implicated without there being any reliable piece of evidence against the accused and the prosecution has failed to make out a case against the accused persons. The Forensic Science Report only shows that the gun shot was fired but then from the scene of occurrence no recoveries were made of the empties etc. and, therefore the gun recovered could not be connected to the crime or

any recoveries were made from the scene of crime. In this background, the trial court was of the opinion that it would not be safe to convict the accused appellants. The learned counsel for the accused prayed that the appeal of the State be dismissed.

We have heard the learned counsel and have given our thoughtful consideration to the material available on record.

The police has tried to create a case against the accused persons by manipulating the story of the prosecution. The case, as set up in the first information report, has not been pursued by the prosecution. According to the first information report, immediately and around the time of occurrence, the accused were not seen firing the shots. The witnesses had gone home and from there apprehending some foul play, returned back and then it has been stated that Lal Chand kicked the dead body, which was not the version given in court and there is no reason as to why an accused will go and see the dead body, for kicking the dead.

Admittedly, in the first information report, and in their statement before the police, none of them have stated to have seen the occurrence. PW/1 Hazari has admitted that he has not seen the

occurrence and it was PW/2 Sohan Lal, who had witnessed the incident. PW/2 Sohal Lal admits that he had not seen the actual firing then the prosecution has taken liberty of improving the case where they have created two eye witnesses. The prosecution lands in a great difficulty in explaining as to why and how they have played with the prosecution case. The treatment given by the learned trial court ,in disbelieving the testimony of these two eye witnesses, appears to be just and proper. There being no corroborative piece of evidence ,the testimony of these two witnesses, who have condemned themselves, cannot be relied on. Merely on suspicion, recording of conviction, is not known to the criminal law, as existing in the country.

In the instant case, the trial court has given cogent reasons and we find ourselves in agreement with the reasons given by it. The analytical approach of the trial court in observing that PW/1 Hazari and PW/2 Sohan Lal are not worthy of reliance is to be considered. If these two witnesses are not reliable, there remains nothing in the prosecution case. The prosecution, in that background , did not make out a case against the accused and we feel persuaded to agree with the judgment of the trial court and thus we find it difficult to convince ourselves to convert the acquittal into conviction.

In our opinion, the trial court, has rightly acquitted the accused and in that view of the matter, the appeal as filed by the State, deserves to be dismissed and is hence dismissed. The accused are on bail. Their bail bonds are cancelled.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George